

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALONZO PALMER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:20-CV-10
)	
C.O. WATERSON, et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

This action was received by the Clerk of Court on January 21, 2020 and was referred to United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Plaintiff filed an amended complaint raising multiple claims against multiple Defendants. ECF No. 29. Defendants, represented by the Office of the Attorney General, filed a motion to dismiss. ECF No. 31.

On January 29, 2021, Magistrate Judge Lanzillo issued a Report and Recommendation recommending that the motion to dismiss be granted in part and denied in part. Judge Lanzillo recommended:

[the motion to dismiss] should be granted as to all claims except Plaintiff's Eighth Amendment claim against C.O. Kennedy and C.O. Ferring. Plaintiff's Eighth Amendment claim against the remaining Defendants and his conspiracy claim should be dismissed without prejudice as Plaintiff may be able to cure the pleading deficiencies of these claims by amendment. It is further recommended that his Fifth Amendment, Fourteenth Amendment, Americans with Disabilities Act, Rehabilitation Act, and negligence claims be dismissed with prejudice, as they fail as a matter of law and any attempt to amend these claims would be futile. Plaintiff, however, should be granted leave to file an amended complaint asserting

ADA and Rehabilitation Act claim against an entity amenable to suit under those statutes or an official of such entity in his or her official capacity.”

ECF No. 48, page 1.

Plaintiff filed Objections to the Report and Recommendation arguing only that Defendants Watterson and Mason should not be dismissed because these two Defendants “are responsible for transferring the Plaintiff from handicap cell to a regular cell.” ECF No. 50.

Plaintiff’s objections in this regard are rejected. The Report and Recommendation recommends that Plaintiff be permitted to file an amended complaint to detail the involvement of Watterson and Mason, as well as any other named Defendant. Indeed, Plaintiff must file an amended complaint consistent with the Report and Recommendation.

After *de novo* review of the amended complaint and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 17th day of February 2021,

IT IS ORDERED that the motion to dismiss filed by Defendants is granted in part and denied in part.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Lanzillo, issued on January 29, 2021 [ECF No. 48] is adopted as the opinion of the court.

AND, IT IS FURTHER ORDERED that Plaintiff’s motions to amend [ECF No. 43; ECF No. 44] and motion for extension of time to amend [49] are granted. Plaintiff must file an amended complaint, consistent with the Report and Recommendation, before March 10, 2021.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge